

APR 17 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TAJU AHMED,

Petitioner - Appellant,

V.

C.A. TERHUNE, Director,

Respondent - Appellee.

No. 04-57174

D.C. No. CV-00-00084-TJW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted March 10, 2006^{**}
Pasadena, California

Before: HALL, THOMAS, and TALLMAN, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Petitioner Taju Ahmed appeals the district court’s dismissal of his petition for a writ of habeas corpus based on its finding that Ahmed’s claims are procedurally defaulted.¹ We affirm.

Under Bennett v. Mueller, 322 F.3d 573 (9th Cir. 2003), the petitioner bears the intermediate burden of alleging evidence to rebut the state’s claim that there is an independent and adequate state ground for denial of his habeas petition. The district court issued an order informing Ahmed that he bore this burden after the state filed a motion to dismiss his habeas petition on state procedural grounds. Ahmed concedes that in his opposition to the motion to dismiss, he failed to “show the inadequacy of the timeliness rule” by “support[ing] his opposition with pertinent and relevant facts accompanied by citation to authority supporting his position.” The district court correctly concluded that Ahmed did not meet his burden under Bennett.

AFFIRMED.

¹Ahmed also briefs additional issues not covered by the Certificate of Appealability (“COA”). Under Circuit Rule 22-1(e), we construe Ahmed’s briefing on the uncertified issues as a motion to expand the COA. Because Ahmed fails to demonstrate that “jurists of reason would find it debatable whether the district court was correct in its procedural ruling,” we decline to expand the COA. Slack v. McDaniel, 529 U.S. 473, 484 (2000).

